

HENRY EDQUIBAN BARRERA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES (JOSEPHINE ELAMPARO, JOSELYN EDUCALANE, EDNA BAGASINA, MILA SABERON, MICHELLE PALMA, CORAZON CANSAS, OSCAR LOPE...

G.R. Nos. 145233-52. May 28, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Henry Barrera (petitioner), the Mayor of the Municipality of Candelaria, Zambales for the period from June 1998 to 2001, was re-elected[1] to the same office for the period from June 2001-2004.

On January 4, 2000,[2] he was indicted before the Sandiganbayan for violation of Section 3(e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) under twenty (20) informations which, except as to the name of the complainant, uniformly read as follows:

That on or about 30 June 1998, or sometime prior or subsequent thereto, in Candelaria, province of Zambales Philippines, and within the jurisdiction of this Honorable Court, accused HENRY E. BARRERA, SANTOS EDQUIBAN and RUFINA E. ESCALA, all public officers, then being the Municipal Mayor, Market Collector and District Supervisor, respectively, all of Candelaria, Province of Zambales, committing the penal offenses herein charged against them while in the performance of, in relation to, and taking advantage of their official functions and duties as such, thru manifest partiality and/or evident bad faith, did then and there, willfully, unlawfully and criminally, in conspiracy with one another, prevent ERMILINDA ABELLA, a legitimate lessee-stallholder from exercising his/her contractual and/or proprietary rights to transfer to, occupy and/or operate his/her assigned stall at the public market of Candelaria, Province of Zambales, under the subsisting lease contract dated 25 June 1998, without any valid or justifiable reason whatsoever, by means of the issuance and implementation of patently unlawful Memorandum No. 1 dated 30 June 1998; thereby causing undue injury to ERMILINDA ABELLA.[3]

On recommendation[4] of the Ombudsman Prosecutor, which was approved by the Ombudsman, petitioner's co-accused Rufina E. Escala and Santos Edquiban were dropped from the informations, by Order[5] dated August 8, 2000, leaving petitioner as the only accused.

Aside from the criminal cases, an administrative case was also filed against petitioner before the Office of the Ombudsman which, by Decision[6] of February 28, 2000, recommended that he be faulted for abuse of authority and penalized with suspension from office without pay for six (6) months. From the decision, petitioner filed a motion for reconsideration which was later to be denied by Order[7] of August 22, 2000.

Petitioner thus filed a petition for review of the Ombudsman decision in the administrative case with the Court of Appeals which denied the same by Decision[8] of February 7, 2002, a motion for reconsideration[9] which does not appear to have been resolved.

With respect to the criminal cases, the Sandiganbayan, by Resolution[10] promulgated on June 28, 2000, ordered

petitioner's preventive suspension for ninety (90) days. Petitioner moved to reconsider the resolution which was denied, however, by Resolution[11] of September 11, 2000.

Petitioner received on October 3, 2000, a copy of the Resolution[12] of the Sandiganbayan denying his motion for reconsideration of the order for his preventive suspension in the criminal cases. And he received on October 30, 2000 a memorandum[13] from then Secretary Alfredo S. Lim of the Department of Interior and Local Government implementing the suspension order.

Hence, the present petition for review on certiorari, the sole issue of which is whether the Sandiganbayan erred in placing petitioner under preventive suspension for a period not exceeding ninety (90) days.

Petitioner admits in his memorandum filed before this Court that upon his receipt of the resolution directing his preventive suspension, he started serving the same.[14] The issue has thus been rendered moot and academic.[15] Besides, the Sandiganbayan, by Decision[16] of May 6, 2002, dismissed Criminal Case Nos. 25035-37, 25039-41, 25043;25045-47, 25049-50 and 25053-54 on the ground that the elements of the offense under Section 3(e) of R.A. 3019 were not established beyond reasonable doubt, as it did Criminal Case Nos. 25038, 25042, 25044;25048, 25052 and 25052 by Order[17] of August 14, 2001.

At this juncture then, a determination of whether the preventive suspension under Section 13 of RA No 3019 is mandatory and automatic would not have any practical effect on the existing controversy.

En passant, if the administrative case filed against petitioner has been terminated also in his favor, he may invoke Section 13 of R.A. No. 3019 which provides:

SEC. 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the government. (Emphasis and underscoring supplied)

Mootness of the suspension order aside, the petition just the same would have failed.

It is petitioner's contention that Section 13, R.A. 3019 should not be taken in isolation but should be viewed in light of the rationale behind the suspension, the purpose being to prevent the officer or employee from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with the records which may be vital in the prosecution of the case against him. And, so petitioner maintains, since the prosecution failed to prove, if not substantially allege that he is abusing the prerogatives of the office, intimidating possible witnesses and/or tampering with documentary evidence during the pendency of the cases against him, the suspension order should not have been issued.

It has been long settled, however, and it bears reiteration that Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public official "shall be suspended from office" while the criminal prosecution is pending in court.[18] The rule on the matter is specific and categorical, leaving no room for interpretation.[19] There are no ifs and buts about it.[20] The court has neither the discretion nor duty to

determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. *Bolastig v. Sandiganbayan*[21] so teaches.

WHEREFORE, the instant petition is hereby DENIED.

SO ORDERED.

Vitug, (Chairman & Acting C.J.) Sandoval-Gutierrez, and Corona, JJ., concur.

- [1] Records of the Sandiganbayan, Vol. III at 113.
- [2] Records of the Sandiganbayan, Vol. I at 349.
- [3] Id. at 1.
- [4] Records of the Sandiganbayan, Vol. I at 127-135.
- [5] Records of the Sandiganbayan, Vol. II at 97.
- [6] Rollo at 168-175.
- [7] Id. at 176-177.
- [8] Records of the Sandiganbayan, Vol. III at 81-89.
- [9] Id. at 113-136.
- [10] Rollo at 45-49.
- [11] Id. at 50.
- [12] Id. at 50.
- [13] Id. at 187.
- [14] Rollo at 532.
- [15] *Ganzon v. Court of Appeals*, 203 SCRA 399, 410 (1991).
- [16] Records of the Sandiganbayan, Vol. III at 160-172.
- [17] Records of the Sandiganbayan, Vol. II at 274.
- [18] *Bunye v. Escareal*, 226 SCRA 332 (1993) at 336.
- [19] *Socrates v. Sandiganbayan*, 253 SCRA 773, 796 (1996).
- [20] Ibid.

[21] 235 SCRA 103, 108 (1994).

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